

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.: 5051of 2007

DATE OF DECISION : May 01, 2007

Mahander Singh

..... Petitioner

VERSUS

Joint Commissioner of Customs

..... Respondent

CORAM : HON'BLE MR. JUSTICE M.M KUMAR.
HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Mr. Jaghmohan Bansal, Advocate
for the petitioner.

Mr. Kamal Sehgal, Advocate
for the respondent.

RAJESH BINDAL, J.

The petitioner in the present case, who is a permanent resident of village Rana Jageer, P.O. & Tehsil Umer Kot, Distt. Mirpurkhas (Pakistan), has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India praying for the release of bangles of the petitioner which were illegally detained by the Customs Authorities at Attari.

Briefly the facts are that the petitioner belongs to a Rajput family of Rajasthan but at the time of partition he stayed back in Pakistan. All his relatives are residents of Rajasthan. To attend the marriage of his close relative, on 05.2.2007 the petitioner along with his family members namely; wife, two daughters, one son and one relative reached Attari station. According to the petitioner, as per Appendix - E to the

Baggage Rules 1998 (for short 'the Baggage Rules') any tourist coming from Pakistan to India can bring personal effects with the condition that the same are re-exported when the tourist leaves India. At the time of immigration check at Attari Station, the daughters of the petitioner were wearing five bangles, weighing about 250 gms. However, the respondent without any rhyme or reason directed the petitioner to hand-over the bangles to him. The same were got assessed by the respondent for weight, purity and found that the same were weighing 0.267 gms valued at Rs. 2,35,761/- (Two lacs thirty five thousand seven hundred sixty one only) @ Rs. 883 per gram and the purity was 23 Carat. The officer concerned was of the view that the bangles were, in fact gold in crude form which was not permitted to be brought by the passengers. At the time of detention, the petitioner was issued Detention receipt (Annexure-P-2) No. 104467, dated 05.02.2007 mentioning the narration of goods, weight, rate and purity thereof as noticed above. Further in Detention receipt in Column-5, containing the reason for detention of goods, it was mentioned 'Re-export out of India'; in Column No. 7, it was mentioned that P.P. Rs. 50,000/- (Rs. Fifty thousand only).

According to the petitioner, the respondent had passed on the spot an adjudication order No. 518/JC/07 and had absolutely confiscated the goods and imposed personal penalty of Rs. 50,000/- (Rs. Fifty thousand only), which is narrated in short as 'P.P.' in the detention receipt. The request of the petitioner for supply of the adjudication order did not yield any result. This fact has not been denied by the respondent in the written statement. All what has been stated is that the spot adjudication order No. 518/JC/07 has been prepared inadvertently. The petitioner also stated that

even though the actual weight of the bangles was 267 gms but in the detention receipt the same was mentioned at 0.267 gms. Still further he submitted that there can never be any intention to smuggle gold from Pakistan to India and that too in such a small quantity as price of gold in Pakistan is higher than the price in India. In fact, the petitioner had come to attend the marriage of a relative and on that occasion, some jewellery was required to be worn by the daughters and wife of the petitioner. Even the detention receipt also mentions bangles five pieces.

In the reply filed, the respondent submitted that due to oversight the weight of the bangles has been wrongly mentioned in the Detention Receipt as 0.267 gms as against the actual weight which is 267 gms. The import of gold in crude form is not allowed from Pakistan. Another mistake which was admitted is regarding passing of on the spot adjudication order No. 518/JC/07. It is admitted that the gold under detention is in the shape of bangles, but in the opinion of the officer concerned, the same was in crude form and not wearable ornaments. Still it has further been admitted that in the detention receipt dated 05.02.07 the amount of personal penalty has been wrongly incorporated whereas no such penalty was determined and levied by issuing show cause notice. At the time of hearing, the respondent has produced before us a copy of show cause notice dated 27.04.2007 addressed to the petitioner.

We have heard Shri Jagmohan Bansal, Advocate for the petitioner and Shri Kamal Sehgal, Advocate for the respondent and with their assistance have perused the paper book.

Reiterating various pleas raised by the petitioner in his petition, Mr. Bansal argued that seeing the totality of the circumstances of the

present case, namely: visit of the petitioner to India along with his family members to attend marriage of a close relative when most of the relatives of the petitioner are residents of India in Rajasthan; the small amount of jewellery in the form of bangles being brought by the petitioner as personal effects to be worn at the time of marriage; the prices of gold being more in Pakistan as compared to India, makes it totally unremunerative to smuggle the same in India. The facts of the case clearly show that the action on the part of the respondent in detaining the bangles is clearly arbitrary. He further submitted the casualness and non-application of mind on the part of the respondent is evident from the fact that firstly the detention receipt shows that the goods have been detained for re-export out of India. When the goods were meant for re-export out of India at the time of return of the petitioner from India, there was no question of levy of any penalty for that but still a personal penalty of Rs. 50,000/-(Fifty thousand only) was shown to have been levied that too without passing any order as show cause notice was issued only on 27.04.07. The weight of the jewellery was shown as 0.267 gms whereas the same was admittedly 267 gms.

He further submitted that the respondent has admitted all discrepancies in the reply filed by him. Still further he submitted that in case the competent officer was of the view that the petitioner could not carry the bangles with him as a personal baggage, the same could be detained for being returned to him on his leaving India and in fact this is also mentioned in column-5 of the detention receipt. The respondent himself was narrating the so-called crude gold as bangles. Once it is so, there was no occasion for detention thereof or for levy of any penalty for any alleged violation. The bangles, worn by the daughters of the petitioner,

may not be so finely crafted as may be available in bigger showrooms, but still those were nothing else but bangles made in simple form by small time jewellers. Attacking the show cause notice, the copy of which was produced before this Court and was handed over to the petitioner only in the Court, learned counsel for the petitioner submitted that there was no reason or material with the officer concerned to form a belief that the small quantity of alleged impugned crude gold in the form of bangles was not meant for personal use. Such a conclusion had no basis to stand considering three lady members in the family visiting India for marriage, five bangles weighing 267 gms were nothing. According to him, entire proceedings by the respondent were arbitrary and without jurisdiction, hence, liable to be set aside and a direction is required to be issued to the respondent to return the bangles to the petitioner.

On the other hand, counsel appearing for the respondent submitted that the gold in crude form could not be brought by the petitioner in his personal baggage and as the petitioner had violated the provisions of the Customs Act, 1962 (for short, the Act) and also the Baggage Rules, the same was liable to confiscation for which a show cause notice has already been issued. However, he could not dispute that in Column-5 of the detention receipt, the reason for detention of goods, it was mentioned that same was for re-export out of India and the discrepancy about the recording of weight of the jewellery and also levy of personal penalty of 50,000/- has also not been disputed. He submitted that this Court should not interfere in the present case at this stage as only a show cause has been issued after detention of the goods and the petitioner will have fair opportunity of hearing before the competent authority for adjudication on his grievance.

He referred to judgement of Hon'ble the Supreme Court in *Standard Chartered Bank and Others v. Directorate of Enforcement and others*, (2006) 4 SCC 278.

Having heard learned counsel for the parties, we are of the view that the action of the respondent in the present case is clearly arbitrary and without jurisdiction showing total casualness in approach. Various discrepancies pointed by the learned counsel for the petitioner are difficult to match. On one hand, the detention receipt says the goods had been detained for the reason that the same are to be re-exported out of India for which there is enabling provision under Section 80 of the Act. On the other hand, the detention receipts shows that a personal penalty of Rs. 50,000/- (Rs. Fifty thousand only) has been levied on the petitioner. In Detention receipt weight of the bangles was mentioned at 0.267 gms. Whereas in reply it was categorically admitted that there was no order passed for levy of personal penalty as the show cause notice was yet to be issued and further that the weight of the goods was 267 gms and not 0.267 gms.

On consideration of the facts of the case in totality, on the basis of material placed before this Court, we could not find that there was any material with the respondent to have formed an opinion that the gold bangles, being brought as part of the baggage by the petitioner, were not meant for personal use of the family. As discussed above, the family coming from Pakistan to India to attend marriage of a close relative having three lady members, the quantity was very small. It is even admitted by the respondent that the gold, which is stated to be in crude form, was in fact in the shape of bangles. The manner, in which the bangles are prepared or type of bangles one would like to wear, would certainly depend on the

subjective satisfaction of the person concerned. Someone may like to wear jewellery made by an expert artisan, embedded with precious stones or with other fine carvings, however, the another may like to wear plain bangles made by some small- time jeweller. Even otherwise, it is not specifically disputed by the respondent that there was nothing lucrative for the petitioner to have made efforts to bring crude gold in the form of bangles to India from Pakistan, the cost of gold in Pakistan being more than in India. In the absence of any incentive, the presumption cannot be drawn that the effort was to smuggle gold into India by concealment or mis-declaration of the baggage for forming a view that the gold being brought in the form of bangles was not meant for personal use of the passengers.

Recently, Hon'ble the Supreme Court in case *Asstt. Commr. Anti Evasion Commr. Taxes, Bharatpur Vs. Amtek India Ltd., 2007 (210) E.L.T. 9 (S.C.)* while commenting upon the conduct of the officer in a case personal cost had been imposed on him and observed as under :-

“In this case though the action of the concerned assessing officer, in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. This is a case where the officer should have been more careful and should not have acted in a manner as if he was a bloodhound and not a watchdog of revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of revenue.”

Keeping in view the above discussions, we quash show cause notice No. 19-CUS/VAL/A.RAIL/15/07/433-435 dated 27.04.07 being illegal, arbitrary and without jurisdiction and direct the respondent to return gold bangles to the petitioner within two weeks from the date of receipt of the order.

The writ petition is disposed of in the manner indicated above.

Copy of the order be given dasti on the payment of usual charges.

(RAJESH BINDAL)

JUDGE

May 01, 2007
Amit

(M.M. KUMAR)
JUDGE